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IN THE

Supreme Court of the United States

October Term, 1972

No. 73-1911

IN THE MATTER OF THE APPLICATION OF

JULIUS P. CROWNE

For Admission to the Bar Examination of Florida

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

JULIUS P. CROWNE,
In Proper Person,
87-10 51 Avenue,
Elmhurst, N. Y. 11373.
(212) 271-5383

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. .....

In the Matter of the Application of

JULIUS P. CROWNE

For Admission to the Bar Examination of Florida

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

Petitioner respectfully prays that a writ of certiorari issue to review the final order of the Supreme Court of the State of Florida entered herein on May 7, 1973 denying rehearing of its order which approved the action of the Board of Bar Examiners (hereinafter the "Board") which denied petitioner's application for admission to the Bar Examination.

Opinion Below

Matter of Crowne, —— So. 2nd ——, 4/4/73, rehearing denied 5/7/73 [contained hereinafter at pp. 1A-5A].

Jurisdiction

The decision to be reviewed was made and entered on April 4, 1973 and is appended hereto, *infra* at p. 1A; rehearing was denied by order dated May 7, 1973 and is

appended at p. 10A. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1257 (3) for certiorari to review the constitutionality of the action of the Court below.

Questions Presented for Review

Does the denial of admission to a Florida Bar Examination to an attorney in another State on the basis of his abstract of practice there and his application

(1) violate through overbreadth and excessive inequality in the filing fee of the application the privileges of citizens under Article IV of the Constitution and the Fourteenth Amendment;

(2) interfere with the right to practice law in violation of the Fifth and Fourteenth Amendments;

(3) violate the "void for vagueness" principle of the Constitution insofar as admission to a Bar Examination is based on an abstract of law practice;

(4) violate due process in depriving petitioner of a hearing before denying his application;

(5) violate due process in being based on a State law enacted in 1955 and applied retroactively to one who graduated from a law school back in 1932;

(6) impair the obligations of a contract in being so based?

Constitutional and Regulatory Provisions Involved

The principal constitutional provisions involved are Article IV section 2 of the United States Constitution and the Fifth and Fourteenth Amendments thereto.

Article IV, Sections 22b and 22c of the Rules of the Supreme Court of Florida, entitled "Relating to Admission to the Florida Bar" and Rule V, Sections 50 and 51 of the Rules and Regulations of the Florida Board of Bar Examiners, the only published State provisions applicable to this case, are set forth *infra* at pp. 6A, 8A and 9A.

Statement of the Case

Petitioner is 63 years old, a graduate of Brooklyn Law School in June, 1932, a member of the New York Bar, retired New York State Supreme Court Clerk and once Senior Attorney with the office of the Attorney-General of the State of New York.

By application executed September 29, 1972 petitioner applied for admission to the Spring, 1973 Bar Examination of Florida scheduled for July 24 and 25, 1973, paying the required fee.

At the same time petitioner completed a questionnaire requiring the names of ten persons who have known him well; also, three attorneys and two clients; and also, five other persons of reputation in his community.

He was required to submit with the application a fee of $400.00 as compared with others, who were not admitted to an out-of-state Bar, of whom a fee of only $110.00 was required.

Subsequently, at the Board's request, an amendment to the application was executed on February 9, 1973 furnishing petitioner's places of residence between 1923 and 1952; the addresses of certain public departments with whom petitioner had been associated in 1947, 1950-52 and 1956; information regarding a Small Claims Court default judgment which had been satisfied more than thirty years ago;

information regarding an uncontested divorce in Mexico during 1947; information regarding a short attendance at Queens College during 1959-60; and a certified copy of an answer in an action in which he was the plaintiff. At the same time the Board enclosed a form to be executed for transmission to the District of Columbia Police Department by reason merely of petitioner's residence in Washington during 1947, supplementing petitioner's fingerprints required to be taken by the New York City Police Department which were furnished together with his application.

Other certificates, affidavits, transcripts and letters were filed at the Board's request. A letter from the Board dated February 14, 1973 which was, of course, subsequent to their action of February 8-9, 1973 requested a certified copy of the Discontinuance of petitioner's action above referred to in which he was the plaintiff together with a Queens College transcript and a letter from the Administrative Justice of the Court regarding the unavailability of the Small Claims suit documents.

Prior to the Board's action they advised petitioner that attendance at Brooklyn Law School was not acceptable and that, in order to qualify for the Spring, 1973 Bar Examination, as an alternative, petitioner must file an abstract of his practice covering the most recent ten years. The abstract which he has been obliged to file relates to a period whose duration expired 23 years ago. Petitioner has made plain to the Board the impossibility of furnishing the details they request covering the last ten years going back 23 years first and no hearing was ever afforded him at which he could have had the opportunity of convincing them of his qualifications.

Petitioner was subsequently notified by the Board, which at first informed him that the fee for his application

would be *$300.00* as compared with *$100.00* for others who were not admitted to an out-of-state Bar, that the fees had been raised to *$400.00* and *$110.00* respectively. The increased fee was paid, however.

The Board, by a Notice of Board Action dated February 15, 1973, then notified your petitioner that his application for admission to the Bar Examination was denied. Relief was requested from the Supreme Court of Florida which held original jurisdiction from the Board's action, but the petition was denied without prejudice to proceeding by applying anew to the Board. A petition to the Court for rehearing of the application was denied.

Pursuant to the original decision granting leave to apply anew, application was once more made to the Board by filing a supplemental abstract together with supporting evidence but the renewed application was also denied as appears from its letter of May 31, 1973.

The Federal questions were raised in the original, amended and rehearing petitions presented to the Court below. They were not passed upon by it. In paragraph 3 of the original petition the action of the Board is described as arbitrary. Paragraph 2 of the amended petition elaborates on this by asserting, "The Third Paragraph thereof (i.e., the original petition) should be amplified to indicate that the arbitrary action complained of also constituted a deprivation of your Petitioner's constitutional rights in that he was denied the opportunity of a hearing to determine how the Board arrived at its decision. . . ." The first Paragraph of the petition for rehearing sets forth "That he (i.e., Petitioner) is being denied his constitutional rights of due process, equal protection and recognition as a citizen of another state. . . ."

Reasons Relied On for the Allowance of the Writ

1. This case presents for determination whether the states should be permitted to predicate sitting for a Bar Examination by attorneys admitted to the bar *in another state* on an abstract of practice covering the most recent ten years thereof; whether they should be clothed with broad discretion by their own self-serving Rule in doing so; and whether the application fee for such attorneys should be significantly higher than for those applicants who are not attorneys admitted to an out-of-state bar. It is the position of this Court that the practice of law is not a matter of the state's grace, *Schware* v. *Board of Bar Examiners,* 353 U. S. 232, note 5; *Willner* v. *Committee on Character and Fitness,* 373 U. S. 96, but a matter of right, *Schware* v. *Board, supra.* A careful search fails to indicate that the principles involved herein have been passed upon by this Court though they are even more prejudical than these cases.

2. "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment". These were the words written by Black, J. in a case where the petitioner's character and fitness were involved by reason of arrests for membership in the Communist Party and for using aliases. *Schware* v. *Board, supra.* The instant case is more extreme in that the petitioner is excluded from even the Bar Examination by arbitrary action under the guise of a Rule requiring an abstract of ten years of practice. Whether a state can unequally arrogate to itself the power to exercise "broad discretion" and require such an abstract after 23 years is a matter which this Court should settle.

3. Petitioner is entitled to sit for the Bar Examination since he has been denied such right without a hearing. *Harrington* v. *State Bar of Cal.*, 292 P 456; *Goldsmith* v. *U. S. Board of Tax Appeals*, 270 U. S. 117.

The state has thus acted in direct conflict with decisions of this Court.

4. The fee discriminating against out-of-state attorneys is repugnant to Article IV, sec. 2; *Ward* v. *Maryland*, 12 Wall. 418; *Ward Baking Co. et al.* v. *City of Fernandino, et al.*, 29 F 2nd 789 and is void. To the same effect is *Toomer et al.* v. *Witsell, et al.*, 334 U. S. 385.

5. Due process and equal protection have also been denied by the discriminating fee. *Campbell Baking Co.* v. *City of Harrisonville*, 19 F 2nd 159; *Bethlehem Motors Corp., et al.* v. *Flynt*, 256 U. S. 421.

6. The Florida Supreme Court has clothed the Board with "broad" discretion and made no provisions for any notice of hearing for the review of arbitrary action.

7. Denial of petitioner's application to sit for the Bar Examination should have been avoided by not giving effect retroactively to a law enacted in 1955 to one who had graduated from a law school in 1932.

CONCLUSION

The petition for a writ of certiorari should be granted.

JULIUS P. CROWNE,
In Proper Person,
87-10 51 Avenue,
Elmhurst, N. Y. 11373.

APPENDIX

Order and Per Curiam Opinion of the Supreme Court of the State of Florida

In the Supreme Court of Florida
January Term, A. D. 1973

Florida Board of Bar Examiners — Case No. 43,439

In Re: Julius P. Crowne

Opinion filed April 4, 1973

Case of Original Jurisdiction—The Florida Board of Bar Examiners

Julius P. Crowne, in proper person, Petitioner

Thomas T. Cobb and C. Graham Carothers, for Florida Board of Bar Examiners, Respondent

PER CURIAM.

The Florida Board of Bar Examiners has declined to accept petitioner Julius P. Crowne's application for admission to the Florida Bar examination. Petitioner seeks relief in this Court via petition for review pursuant to Article IV, Section 21(a) of the Rules Relating to Admissions to The Bar.

It appears from the record that petitioner graduated from the Brooklyn Law School in June, 1932, with an L.L.B. degree. The school was not provisionally approved by the American Bar Association until 1937 and has never become a member of the Association of American Law Schools. Accordingly, petitioner is not in compliance with the prerequisite of Article IV, Section 22(b) of the Rules,

requiring "graduation from a full-time accredited law school at a time when, or in the same calendar year in which such school was so accredited". The term "accredited law school" is defined by Section 22(b) to include "any law school approved or provisionally approved by the American Bar Association or which is a member of the Assocation of American Law Schools".

However, the Rules provide an alternate method whereby persons in petitioner's situation may qualify for admission to the Bar examination. Pursuant to Article IV, Section 22(c) of the Rules, an attorney in good standing in the Bar of a state who practiced law in that state for a 10-year period may be admitted to the Bar examination although he or she failed to graduate from an accredited law school. The Rule is detailed and clothes the Board with broad discretion in evaluating applicants seeking admission thereunder:

> "(c) Attorneys who were in good standing in the District of Columbia and in the States of the United States of America may, notwithstanding the provisions of Sections 22(a) and 22(b) hereof, be permitted to take the bar examination to be admitted to the practice of law in Florida (1) upon furnishing similar requirements as to fitness, except as required by Sections 22(a) and 22(b), as are required of other candidates to take the examination; (2) upon producing such evidence as the Board may require, that such applicant was in the practice of law in the District of Columbia or in other States of the United States of America, or in practice in federal courts in territories, possessions or protectorates of the United States for at least ten years,

and that he was in good standing at the bar of the District of Columbia, the territory, possession or protectorate, or of the State from which he came; and (3) upon furnishing to the Board an abstract showing the scope and character of the applicant's previous experience and practice at the bar, including samples of the quality of the applicant's work, such as pleadings, briefs, legal memoranda, corporate charters or other working papers which the applicant considers illustrative of his expertise, his academic and his legal training. Such abstract should confine itself to the applicant's most recent ten years of practice. If a thorough consideration of this abstract shows that the applicant is a lawyer of high character and ability, that his professional conduct has been above reproach, and that his academic and legal scholarship conform to approved standards and sum up to the equivalent of that required of other candidates for admission to the examination, the Board may, in its discretion, admit him to the examination. In evaluating academic and legal scholarship the Board is clothed with a broad discretion."

Petitioner was admitted to the Bar of the State of New York on November 13, 1933 and a certificate of the Clerk of the Appellate Division of the Supreme Court of the State of New York dated September 29, 1972 indicates that he continues in good standing as a member of the New York bar. Petitioner asserts that he practiced law in New York continuously between the years 1933 and 1943, at which time he entered service with the War Department in Washington. He again entered the practice of law in

1947 and continued to practice until 1950. Thereafter he worked two years as an adjuster for the Public Works Department of the State of New York and then accepted an appointment as Clerk of a division of the Supreme Court of New York. He was employed in that position until his retirement last year and decision to move to Florida.

The difficulty with petitioner's application appears largely to surround the "abstract of practice" furnished by him to the Board of Bar Examiners. The abstract is, as the Board asserts, "inadequate for reasons which are made clear by examination thereof". In his "abstract" petitioner states, *inter alia*:

> "The attention of the Board is respectfully called to the fact (as disclosed in the application) that the applicant has not been engaged in the practice of law since 1950, almost 23 years ago and, starting with 1933 up to 1943 there was an interval from 1943 to 1947 when it was again resumed up to 1950. In those circumstances, with my records disposed of, any details would be impossible to furnish."

There is no requirement in the Rules Relating to Admissions to the Bar that an applicant's practice be recent, but passage of time does not excuse compliance with the requirements of Section 22(c). As we said in *Petition of Klein*, 259 So. 2d 144 (Fla. 1972),

> ". . . Recently, in Diaz v. Florida Board of Bar Examiners, 252 So. 2d 366 (Fla. 1971), we indicated that demonstration of practice was a relatively flexible requirement. It is not designed to thwart an applicant, but rather to establish assurance of an applicant's ability and capacity to function as a

> lawyer. For this reason, Section 22(c)(3), which governs this route to the Bar Examination, states that in evaluating the work of an applicant, '[T]he Board is clothed with a broad discretion.' "

It is apparent the abstract produced by petitioner is insufficient to allow the Board to evaluate his "ability and capacity to function as a lawyer" and thus in our judgment the Board correctly denied his application for admission to the Florida Bar Examination. However, petitioner's background suggests that he may well be qualified to enter the practice of law should he produce the necessary material required by Section 22(c)(3). Accordingly, as in *Petition of Klein, supra,* we deem it appropriate to deny the petition without prejudice to petitioner to apply anew at a later date, when he can supply the Board with reasonably accurate details of the extent of his legal practice, supported by appropriate documentation. The Board may then evaluate his experience and determine whether he "is a lawyer of high character and ability", whether "his professional conduct has been above reproach", and whether "his academic and legal scholarship conform to approved standards and sum up to the equivalent of that required of other candidates for admission to the examination".

The petition is denied without prejudice to petitioner to proceed in the manner above indicated.

It is so ordered.

CARLTON, C.J., ADKINS, BOYD, MCCAIN and DEKLE, JJ., Concur

Article IV: Rules Relating to Admission to the Florida Bar

Section 22. Every applicant is also required:

. . .

(b) To furnish the Board satisfactory evidence of graduation from a full-time accredited law school at a time when, or in the same calendar year in which such school was so accredited, and that such accredited law school has conferred upon the applicant the degree of Bachelor of Laws or Doctor of Jurisprudence. The term, "accredited law school", has reference to any law school approved by the American Bar Association or which is a member of the Association of American Law Schools. None of the following shall be substituted for law school training:

1. Private study, correspondence school or law office training;
2. Age or experience;
3. Waived or lowered standards of legal training for particular persons or groups.

For the purpose of enforcement of this rule a degree in law shall be deemed conferred and the applicant graduated when the Dean of the Law School certifies to the Board that the applicant has completed the requirements for graduation and that the degree will be conferred.

(c) Attorneys who were in good standing in the District of Columbia and in the States of the United States of America may, notwithstanding the provisions of Sections 22(a) and 22(b) hereof, be permitted to take the bar examination to be admitted to the practice of law in Florida (1) upon furnishing similar requirements as to fitness, except as required by Sections 22(a) and 22(b), as are required of other candidates to take the examination; (2) upon producing such evidence as the Board may require, that such applicant was in the practice of law in the District

of Columbia or in other States of the United States of America for at least ten years, that he was in good standing at the bar of the state from which he came; and (3) upon furnishing to the Board an abstract showing the scope and character of the applicant's previous experience and practice at the bar, including samples of the quality of the applicant's work, such as pleadings, briefs, legal memoranda, corporate charters or other working papers which the applicant considers illustrative of his expertise, his academic and his legal training. Such abstract should confine itself to the applicant's most recent ten years of practice. If a thorough consideration of this abstract shows that the applicant is a lawyer of high character and ability, that his professional conduct has been above reproach, and that his academic and legal scholarship conform to approved standards and sum up to the equivalent of that required of other candidates for admission to the examination, the Board may, in its discretion, admit him to the examination. In evaluating academic and legal scholarship the Board is clothed with a broad discretion.

Notice of Board Action of Florida Board of Bar Examiners

FLORIDA BOARD OF BAR EXAMINERS
NOTICE OF BOARD ACTION

Date February 15, 1973

To: Mr. Julius P. Crowne
87-10 51 Avenue
Elmhurst, L. I., New York 11373

This will advise you that this Board, while in formal session in Jacksonville, Florida, during February 8-9, 1973, after having carefully considered the abstract of practice filed by you on October 5, 1972 and information

in your application complementing your abstract, determined that you have failed to provide sufficient grounds to justify the Board in finding you qualified under the provisions of Article IV, Section 22(c), of the Rules of the Supreme Court of Florida Relating to Admissions to The Bar and the Board so ruled. Your application for admission into the Spring (July) 1973, Florida Bar Examination was denied.

(Seal)

JAMES B. TIPPIN, JR.
Executive Director

Notice of Increase in Fees of Florida Board of Bar Examiners

NOTICE OF INCREASE IN FEES
FLORIDA BOARD OF BAR EXAMINERS

Supreme Court Building
Tallahassee 32304

Notice to All Applicants

For Admission to The Florida Bar Examination
Which Will Be Administered During
July 24 and 25, 1973,

And Subsequent Examinations

In compliance with a recent order of the Supreme Court of Florida, the fees specified under Rule V of the Rules Relating to Admission to The Florida Bar will reflect the following:

Rule V, Section 50	$110.00
Rule V, Section 51	$400.00

James B. Tippin, Jr., Executive Director

Rule V, Sections 50 and 51 Prior to Notice of Increase

Section 50. The application of applicants described in Section 2 (i.e. who have not been admitted to the Bar in any other jurisdiction) shall be accompanied by a fee of $100.00.

Section 51. The application of applicants described in Section 3 (i.e. all others) shall be accompanied by a fee of $300.00.

Order Denying Rehearing of Petition

IN THE

SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1973

MONDAY, MAY 7, 1973
CASE NO. 43,439

FLORIDA BOARD OF BAR EXAMINERS

In Re: JULIUS P. CROWNE,

On consideration of the petition for rehearing filed by Julius P. Crowne,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

CARLTON, C. J., ADKINS, BOYD, MCCAIN and DEKLE, JJ., concur

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.
By (Illegible)

Y

CC: Mr. Julius P. Crowne
Hon. C. Graham Carothers
Hon. James B. Tippin

Letter of the Board Dated May 31, 1973 Denying Renewed Application

(Letterhead of)

FLORIDA BOARD OF BAR EXAMINERS

May 31, 1973

Mr. Julius P. Crowne
87-10 51 Avenue
Elmhurst, L. I., New York 11373

Dear Mr. Crowne:

This will advise you that this Board, while in formal session in Miami, Florida, during May 25, 1973, after having carefully considered the abstract of practice filed by you on October 5, 1972, the supplemental abstract filed by you on May 15, 1973, and information in your application complementing your abstract, again determined that you have failed to provide sufficient grounds to justify the Board in finding you qualified under the provisions of Article IV, Section 22(c) of the Rules of the Supreme Court of Florida Relating to Admissions to The Bar and the Board so ruled.

In addition to the foregoing, the Board considered your request for admission to the examination prior to the establishment of your qualifications under the provisions of Article IV, Section 22(c), of the Supreme Court Rules and again held that it is without authority to waive the Rules of the Supreme Court of Florida.

Your application for admission into the Spring (July) 1973 Florida Bar Examination was denied.

Sincerely,

JAMES B. TIPPIN, JR.
James B. Tippin, Jr.
Executive Director

JBT/jas

Certified Mail No. 816207
Return Receipt Requested